Pesticide and Noxious Weed Newsletter

Winter/Spring 2004 Nebraska Department of Agriculture Vol. 14

EPA Guidance: Pesticide Applications Near or Over Water

Recently, the U.S. Environmental Protection Agency (EPA) issued an interim statement and guidance regarding the use of pesticides near or over water in response to lawsuits in some states which argued that such applications were in violation of the Clean Water Act. In the interim guidance, EPA states that certain labeled uses of pesticides, when used according to the directions on the label and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), do not require a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act. NPDES permits are issued to limit the amount of pollutants, usually wastes in point source situations, such as in industrial or municipal waste treatment, that are discharged into waters of the United States. Based on this guidance, NPDES permits are not required when:

1. Pesticides are applied directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae or aquatic weeds that are present in the waters of the United States; and
2. Pesticides are applied to control pests that are present over waters of the United States that result in a portion of the pesticides being deposited to waters of the United States; for example, when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when insecticides are applied over water for control of adult mosquitoes.

These exclusions are qualified by the statement "when applied consistent with all relevant requirements of FIFRA," which essentially means "if it is allowed on the label."

As indicated in the FR Notice, EPA will be issuing a final determination based on the comments received. Interested persons can see both the Notice and the comments at: http://fpub.epa.gov/pesticides/rchive_ocp.cfm (see 10/14/03 entry). Additional background information can be found at:

- Ninth Circuit Court of appeals: Headwaters, Inc. v. Talent Irrigation District (http://www.pestlaw.com/x/courts/headwaters01.html)
- Second Circuit Court of Appeals: Altman v. Town of Amherst (http://www.pestlaw.com/x/courts/altman20020926.html)
- Ninth Circuit Court of Appeals: League of Wilderness Defenders et al. v. Forsgren (U.S. Forest Service) (http://www.pestlaw.com/x/courts/wilderness20021104.html)
- The Clean Water Act (http://www.epa.gov/r5water/cwa.htm)

Inside this Issue

Weeds of the Great Plains Available

The Nebraska Department of Agriculture (NDA) is pleased to announce the new *"Weeds of the Great Plains"* book is available to the public. This book is written to meet the needs of farmers, ranchers, and home owners, as well as the more technical expectations of botanists.

The book is a collaborative effort between the University of Nebraska and NDA. It features detailed narratives of over 400 plants; line drawings of 266 weeds; large colored photographs; close-up photographs of weed flowers, seedlings and key identification characteristics; identification methods to distinguish similar species; historical attributes and uses of each plant; and plant habitats and descriptions of growth forms.

The authors of the book include Dr. James Stubbendieck, Professor of Agronomy at the University of Nebraska - Lincoln; Mitch Coffin, Noxious Weed Program Manager for the Nebraska Department of Agriculture; and Lori Landholt, Research Technologist for the Department of Agronomy at the University of Nebraska - Lincoln.

Books are available for purchase from NDA for $25 by calling (402) 471-2394. An order form is available online by visiting the Noxious Weed Program web page at http://www.agr.state.ne.us/division/bpi/nwp/nwp1.htm.

2003 Nebraska Gypsy Moth Survey

The gypsy moth, *Lymantria dispar*, is a serious pest of trees in the northeastern United States where it is established. It presents a substantial threat to the future of Nebraska's urban environment and forest resources. Trees in Nebraska are under constant stress because of our environment. Gypsy moth larvae defoliate trees causing growth loss, increased susceptibility to secondary invaders, and increased mortality rates. Both rural and urban ecosystems are affected with the accompanying changes in stand density and species composition. Wildlife resources are impacted favoring some species and disfavoring others. Watersheds are damaged and water quality is reduced. Urban and tourist areas can experience reduced property values, increased heating and cooling costs, and other problems related to aesthetics and human health. Once gypsy moths become established in an area, it can have an adverse effect on trade. It may become more difficult to meet export requirements for plants and plant products. Homeowners and growers of nursery stock have an additional burden of treatment and management. Homeowner treatment for this plant pest could have an adverse effect on the environment

USDA/APHIS/PPQ Archives

Since its introduction into the United States in 1869, the European gypsy moth has spread throughout most of the northeastern United States. Control efforts which covered 200 acres in 1900, now include more than 403 counties in 17 states. In the United States, gypsy moth defoliation has been as high as 12.9 million acres of forest land (1981). The gypsy moth is under a federal quarantine but continues to spread naturally at an average rate of 13 miles per year. The gypsy moth is now moving across Wisconsin, entering the Chicago area of Illinois, and threatening eastern Iowa and states beyond. The factors that led to the rapid spread include the movement of infested nursery stock, logs, lumber, and personal articles from the infested areas. Nebraska may soon be faced with advancing fronts of the European gypsy moth.

The Entomology Program of the Bureau of Plant Industry is responsible for setting, monitoring, and collecting gypsy moth pheromone traps in Nebraska. A total of 1,011 gypsy moth traps (994 detection and 17 delimiting traps) were set in Nebraska in 2003 by the Nebraska Department of Agriculture (NDA) staff. A single gypsy moth was confirmed in Lincoln, and two gypsy moths were trapped in a single trap in Elkhorn, just outside Omaha. In the future, we will be using the ISIS (Integrated Survey Information System), a federal program for field entry of trapping data and obtaining the exact location of traps, using Personal Digital Assistants (PDAs) and Geographic Information Systems (GIS) technology.

During November and December 2003, Christmas tree sales lots will be inspected, verifying that no pest problems are coming in on the trees, as well as verifying that the correct paperwork is received.

2003 Nebraska Japanese Beetle Survey

The Japanese beetle (*Popillia japonica*) is a highly destructive plant pest of foreign origin. It was first found in the U.S. in a New Jersey nursery in 1916, and it is now found east of the Mississippi River. The adult beetles feed on most deciduous trees and shrubs, garden fruits, vegetables, soybeans, and corn.


Clemson University - USDA Cooperative Extension Slide Series

The Entomology Program of the Bureau of Plant Industry is responsible for setting, monitoring, and collecting Japanese beetle pheromone traps. In 2003, 317 Japanese beetle traps were set and recovered in 27 counties, which included traps set at airports, rail yards, rest stops, State parks, special quarantine compliance areas, nursery growers, and nursery dealers. Growers and nursery dealers that are high-risk sites because they import balled and burlapped nursery stock were individually trapped. In the Omaha metropolitan area, 193 Japanese beetle traps were placed in the 154 square mile area. As of October 27, 2003, 145 traps had been collected in the Omaha area, with a total number of 9,101 beetles trapped. There were 124 traps collected outside of Omaha, containing a total of 2,567 beetles. A biological control project was coordinated with USDA, APHIS, PPQ. Thirty-five auto-inoculators were used at nine nursery sites and three landscapes in the Omaha area, where a high number of beetles were trapped in 2002. The auto-inoculators contained *Metarhizium anisopliae* biocontrol spores, mixed at a rate of one part spores to 10 parts cornstarch. This is a soil-inhibiting fungus that kills the beetle larvae. In 2002, a total of 11,531 beetles were trapped. The Omaha area accounted for approximately 10,000 Japanese beetles. The effects of this fungus will be monitored.

Fumigation Management Plan - Put It in Writing

As part of a comprehensive revision to all aluminum or magnesium phosphide fumigants, new labels will require the applicator to develop a written Fumigation Management Plan (FMP) for each fumigated site.

The purpose of the FMP is to ensure the safety of the applicators, grain company employees, community, and the environment. It is also designed to ensure an effective fumigation and to assist the company in meeting phosphine label requirements.

The Applicator's Manual (referenced by the label) will detail what a person will need to consider when putting together a Fumigation Management Plan (FMP). Each plan will require significant planning and will include details such as:

- A drawing or sketch of the structure to be fumigated, delineating features, hazards, and structural characteristics. Identification of nearby structures, shared utilities, and common access sites.
- Identification of persons who routinely enter the area to be fumigated (employees, visitors, customers, etc.).
- Employee notification procedure and written confirmation.
- Training, provision of PPE and monitoring equipment.
- Written Emergency Response Plan, shared with site management.
- Notification of local authorities (providing label, MSDS, and contact information).
- Emergency phone numbers (both day and night) of local health, fire, police, hospital, and appropriate company officials.
- Documented sealing and placarding of the fumigation site.
- Post-application monitoring and aeration records.
- Notification of recipient of grain fumigated in transit.

Fumigations will require extensive planning and the applicator will be required to keep extensive records (maintained for a minimum of three years).

Be watching for the new phosphine labels and be sure to work your way through the Applicator's Manual for guidance on developing an FMP. An illustration of an FMP can be viewed at: http://ipm.okstate.edu/ipm/stored_products/sprec/July-Sept02.pdf

Farm Mediation and Risk Management Resources

Production risks have been a large part of Nebraska agriculture since the days of the pioneers. The Farm Mediation Service, Nebraska Legal Services, and the Risk Management Agency have coordinated programs to provide the following resources for Nebraska farmers and ranchers:

- **Nebraska Farm Mediation Service -** Administered by the Nebraska Department of Agriculture, the Mediation Service offers financial preparation and mediation to producers facing disputes with private lenders and/or any USDA agency. Call 800-446-4071.

- **Nebraska Farm Hotline -** The Hotline provides information on available resources and services including "Fact sheets" for eight Risk Management topics. Located in the Nebraska Legal Services office in Bancroft, the Hotline is sponsored by Interchurch Ministries of Nebraska. Call 800-464-0258.

- **Farm Mediation Financial and Legal Clinics -** Free clinics, sponsored by The Farm Mediation Service, provide one-on-one education on financial matters, legal issues, and the Farm Mediation Service. Clinics are staffed by experienced attorneys and financial counselors in Grand Island, Ainsworth, Alliance, Beatrice, North Platte, Norfolk, and Lexington. Call 800-446-4071 or 800-464-0258.

- **Nebraska Legal Services -** Free legal assistance is provided throughout the state to income eligible individuals. Call 877-250-2016.

- **The Nebraska Legal Services web site** at **www.nebls.com** has articles on legal rights farmers and ranchers have in bankruptcy and debtor/creditor law; farm leases; federal loans and conservation programs; zoning and environmental laws impacting livestock production; and production to marketing risk management (Click on Special Projects).

- **The USDA's Risk Management Agency web site** at www.rma.usda.gov has additional information including a map of drought areas and information about available insurance products.

- **The Nebraska Department of Agriculture's Mediation website** at www.agr.state.ne.us/division/med has additional information on Farm Mediation and a copy of the Newsletter, "The Mediator."

Enclosed in this newsletter is a page-sized poster containing pesticide storage security information. This was cooperatively produced by the Nebraska Department of Agriculture and the University of Nebraska-Lincoln. It is also available free of charge, in a larger, 18 X 24" poster that can be prominently placed. Please call (402) 471-2394 to request your copy.

Can You Grandfather into a New Category or Do You Need to Take an Exam?

It's possible that you could receive an updated license with an additional category or subcategory WITHOUT even taking an exam! You are allowed this option because the information you have received from your existing category training is sufficient to become certified in one or more of our new categories. To add the extra category or subcategory all you need to do is complete a recertification training session and request the new category/subcategory on your application form.

It's also possible that to continue work controlling all of the pests you have in the past, you will need to ADD a new category or subcategory to your license by taking an exam[1]. Completion of the exam will ensure that you have the knowledge needed to work with unique pests, pesticides, and application techniques.

Check your existing license. If you are licensed in a category listed on the left column below, continue on to the next columns to read what you must do to add one of the new NDA pesticide applicator categories or subcategories to your license.

If you already possess this category	And you would like to possess this new category/subcategory	You must do the following
01- Ag Plant Pest Control	14- Wildlife Damage Control	take Category 14 exam
01- Ag Plant Pest Control	01a - Soil Fumigation	take subcategory 01a exam
02- Ag Animal Pest Control	14- Wildlife Damage Control	take Category 14 exam
03- Forest Pest Control	14- Wildlife Damage Control	take Category 14 exam
04- Ornamental & Turf	14- Wildlife Damage Control	take Category 14 exam
05- Aquatic Pest Control	5S- Sewer Root Control	take subcategory 5S exam
05- Aquatic Pest Control	14- Wildlife Damage Control	take Category 14 exam
07- Right-of-Way Control	14- Wildlife Damage Control	take Category 14 exam
08- Structural/Health Pests	14- Wildlife Damage Control	recertify in 08 and select 14 on application form without testing
08- Structural/Health Pests	8W- Wood Destroying Organisms	recertify in 08 and select 8W on application form without testing
09- Public Health Pests	14- Wildlife Damage Control	recertify in 09 and select 14 on application form without testing
13- Demonstration/Research and Regulatory Pest Control	D/R subcategory select D/R	recertify in a major category and
13- Demonstration/Research and Regulatory Pest Control	REG subcategory	recertify in a major category[2] and select REG

[1] Details on these exams will be available at all recertification meetings in 2003

[2] Categories 01, 02, 03, 04, 05,07, 09,11, 12, or 14

Got a question about:

- which type of pesticide applicator license you need
- scheduling an NDA certification exam
- recertification options (locations, dates)
- your certification status

Calling from anywhere in the state, you can now ask your certification questions at no cost to you by calling the Pesticide Certification Program's new toll free number, which is:

877-800-4080

For calls not related to certification, please use the following: (402) 471-2394.

MIXER/LOADER TRAINING VERIFICATION

As of July 20, 2002, the Nebraska Pesticide Act requires certification or training for anyone who mixes, loads, or disposes of restricted use pesticides, or any pesticide used in commercial lawn care, commercial structural pest control, or non-commercial outdoor vector control. The intent of this training is to provide people who handle, mix, or dispose of pesticides to receive correct information on how to protect themselves, the environment, and understand pesticide security issues. The Nebraska Department of Agriculture (NDA) will recognize approved training videotapes as a substitute for applicator certification. Any videotape training used for mixers/loaders must be approved by the NDA prior to use. Once the mixer/loader has received the approved training, the employer and the employee must sign this document and keep it, along with the approved training materials, for a period of three years, and make this information available to the NDA upon request. Training must be repeated every three years, similar to certification renewal.

TO BE COMPLETED BY EMPLOYEE:

By signing below, I am verifying that I have viewed an NDA-approved training videotape for mixers/loaders of pesticides. I understand that this training must be renewed every three years.

Name of Employee (printed)_____

_____

Employee Signature

_____

Date _____

TO BE COMPLETED BY EMPLOYER/SUPERVISOR:

By signing below, I am verifying that the above-named employee viewed an NDA-approved videotape for mixer/loaders of pesticides. I understand that this training must be renewed every three years. I also understand that I am obligated to retain a copy of the NDA-approved videotape and present it, along with this document, to an NDA representative on request.

Name of Employer/Supervisor and Company Name/Location (printed)

_____

_____

Employer/Supervisor Signature _____

Date _____

Title of NDA-approved Videotape _____

YOU MAY COPY THIS FORM FOR ADDITIONAL EMPLOYEES. QUESTIONS REGARDING APPROVED VIDEOTAPES CAN BE DIRECTED TO THE NDA'S PESTICIDE PROGRAM AT (402) 471-2394.

2004 Initial Certification Meetings Commercial and Non-Commercial (UNL or Association Training as well as Exams)

Training entities may charge fees for training which are separate from the license fee NDA is required to collect.

Date	Meeting	Category(ies)	City, Location
January 22-23	Urban Pest Mgt. Conf.	8, 8W, 9, 11, 14	Lincoln, Cornhusker Hotel
January 28	UNL Initial Certification	1, 4, 9, 11	Scottsbluff, UNL Panhandle Research Center
January 28	NE Seed Improvement Conf.	6	Kearney, Ramada Inn
February 3	UNL Initial Certification	4, 7, 11	Beatrice, Gage Co. Extension
February 3	UNL Initial Certification	1, 4, 8	Columbus, Platte Co. Extension
February 3	UNL Initial Certification	1, 4, 6, 7	Fremont, Dodge Co. Extension
February 3	UNL Initial Certification	1, 4, 5, 7, 8, 10	Grand Island, College Park
February 3	UNL Initial Certification	1, 4, 7, 9, 11	Lincoln, Lancaster Co. Extension
February 3	UNL Initial Certification	1, 4, 7, 8, 9	Norfolk, Lifelong Learning Center
February 3	UNL Initial Certification	1, 2, 5, 9	North Platte, UNL West Central Research Center
February 3	UNL Initial Certification	1, 4, 8, 10	Omaha, Douglas Co. Extension
February 26	Custom Applicator School	1	Hastings, Central Comm. College
February 26	Nebraska Grain & Feed	11	Kearney, Holiday Inn
February 26	UNL Initial Certification	1, 4, 9	Beatrice, Gage Co. Extension
February 26	UNL Initial Certification	4, 7, 9	Columbus, Platte Co. Extension
February 26	UNL Initial Certification	2, 4, 6, 9, 11	Grand Island, College Park
February 26	UNL Initial Certification	1, 2, 4, 7, 8	Lincoln, Lancaster Co. Extension
February 26	UNL Initial Certification	1, 4, 5, 10	Norfolk, Lifelong Learning Center
February 26	UNL Initial Certification	4, 7, 8, 10	North Platte, UNL West Central Research Center
February 26	UNL Initial Certification	3, 4, 7, 9	Omaha, Douglas Co. Extension
February 26	UNL Initial Certification	4, 5, 7, 8	Scottsbluff, UNL Panhandle Research Center
March 18	UNL Initial Certification	1, 4, 7, 8, 9	Norfolk, Lifelong Learning Center
March 18	UNL Initial Certification	4, 7, 9, 10	Omaha, Douglas Co. Extension
March 18	UNL Initial Certification	1, 4, 7	Scottsbluff, UNL Panhandle Research Center
April 22	UNL Initial Certification	4	Lincoln, Lancaster Co. Extension
April 22	UNL Initial Certification	4, 7, 8	Omaha, Douglas Co. Extension
April 22	UNL Initial Certification	4	Scottsbluff, UNL Panhandle Research Center

2004 Recertification Meetings Commercial and Non-Commercial

Training entities may charge fees for training which are separate from the license fee NDA is required to collect.

Date	Meeting	Category(ies)	City, Location
January 7	Crop Protection Clinic	1	Lincoln, Lancaster Co. Extension
January 8	Crop Protection Clinic	1	Fremont, Holiday Lodge
January 9	Crop Protection Clinic	1	Auburn, Arbor Manor
January 12	NE Turfgrass Conference	4	Omaha, Holiday Inn Central
January 13	Crop Protection Clinic	1	Fairbury, 4-H Building
January 14	Crop Protection Clinic	1	York, Chances “R”
January 15	Crop Protection Clinic	1	Hastings, Holiday Inn Garden Café
January 16	Crop Protection Clinic	1	O’Neill, Blarney Stone Restaurant
January 20	Crop Protection Clinic	1	Scottsbluff, UNL Panhandle Research Center
January 21	Crop Protection Clinic	1	Ogallala, Ramada Limited
Jan. 22-23	Urban Pest Mgt. Conf.	8, 9, 11	Lincoln, Cornhusker Hotel
January 22	Crop Protection Clinic	1	Broken Bow, Elk’s Lodge
January 23	Crop Protection Clinic	1	Holdrege, Ag Center
January 27	Crop Protection Clinic	1	Norfolk, Lifelong Learning Center
January 28	NE Seed Improvement Conf.	6	Kearney, Ramada Inn
January 29	UNL Recertification	4, 7, 8, 11	Scottsbluff, UNL Panhandle Research Center

(Continued on next page)

Please post for Future Reference

Date	Meeting	Category(ies)	City, Location
February 5	UNL Recertification	4, 7	Albion, KC Hall
February 5	UNL Recertification	4, 7, 11	Beatrice, Gage Co Extension
February 5	UNL Recertification	2, 4, 5, 7, 8, 10	Grand Island, College Park
February 5	UNL Recertification	4, 7	Holdrege, Phelps Co. Fairgrounds
February 5	UNL Recertification	4, 5, 7, 8, 11	Lincoln, Lancaster Co. Extension
February 5	UNL Recertification	4, 5, 7, 8, 10, 11	Norfolk, Lifelong Learning Center
February 5	UNL Recertification	4, 7, 10, 11	North Platte, UNL West Central Research Center
February 5	UNL Recertification	4, 7, 8, 11	Omaha, Douglas Co. Extension
February 5	UNL Recertification	4, 7, 8	O'Neill, Holt Co. Extension
Febr. 10-11	NATA	1, 12	North Platte, Quality Inn
February 24	UNL Recertification	4, 5, 7	Ainsworth, Courthouse Meeting Rm
February 24	UNL Recertification	4, 7, 11	Beatrice, Gage Co. Extension
February 24	UNL Recertification	4, 5, 7	Columbus, Platte Co. Extension
February 24	UNL Recertification	4, 7, 8	Fremont, Dodge Co. Extension
February 24	UNL Recertification	4, 5, 7	Holdrege, Phelps Co. Extension
February 24	UNL Recertification	2, 4, 7, 8, 11	Lincoln, Lancaster Co. Extension
February 24	UNL Recertification	4, 5, 6, 7, 8, 11	Norfolk, Lifelong Learning Center
February 24	UNL Recertification	2, 4, 7, 10	North Platte, UNL West Central Research Center
February 24	UNL Recertification	4, 5, 7, 10	Omaha, Douglas Co. Extension
February 24	UNL Recertification	4, 7	Ord, Valley Co. Extension
February 24	UNL Recertification	4, 5, 7, 11	Scottsbluff, UNL Panhandle Research Center
February 26	NE Grain & Feed Assoc.	11	Kearney, Holiday Inn
February 26	Custom Applicator School	1	Hastings, Central Comm. College
March 16	UNL Recertification	4, 7, 8, 11	Beatrice, Gage Co. Extension
March 16	UNL Recertification	4, 7, 10	Columbus, Platte Co. Extension
March 16	UNL Recertification	4, 5, 7, 8, 10, 11	Grand Island, College Park
March 16	UNL Recertification	4, 5, 7, 8, 10, 11	Norfolk, Lifelong Learning Center
March 16	UNL Recertification	4, 7, 8, 11	Omaha, Douglas Co. Extension
March 16	UNL Recertification	4, 5, 7	O'Neill, Holt Co. Extension
March 16	UNL Recertification	5, 7	Ord, Valley Co. Extension
March 16	UNL Recertification	4, 5, 7, 11	Scottsbluff, UNL Panhandle Research Center
March 16	UNL Recertification	4, 5, 7, 11	Valentine, Cherry Co. Extension

2003-2004 Association Recertification Meetings
Commercial and Non-Commercial

Date	Meeting	Category(ies)	City, Location
Dec. 11-12	NE Pest Control Assoc.	7, 8, 8W, 9	Lincoln
Jan. 12, 2004	NE Turfgrass Conference	4	Omaha, Holiday Inn Central
Jan. 22-23	Urban Pest Mgt. Conf.	8, 9, 11	Lincoln, Cornhusker Hotel
Jan. 28, 2004	NE Seed Improvement	6	Kearney, Ramada Inn
Febr. 10-11	NATA	1, 12	North Platte, Quality Inn
Febr. 26	NE Grain & Feed Assoc.	11	Kearney, Holiday Inn
Febr. 26	NE Agri-Business Assoc	1	Hastings, Central Comm. College Custom Appl School

Applicator Categories

1	Ag Plant	7	Right-of-Way
1a	Soil Fumigation	8	Structural Health
2	Ag Animal	8W	Wood Destroying Organism
3	Forest	9	Public Health
4	Ornamental and Turf	10	Wood Preservation
5	Aquatic	11	Fumigation (grain)
5S	Sewer Root *(metam sodium)*	12	Aerial
6	Seed Treatment	14	Wildlife Damage Control
		REG	Regulatory Subcategory
		D/R	Demonstration/Research Subcategory

Please post for Future Reference

PESTICIDE INSPECTION AND ENFORCEMENT SUMMARY

The following data reflect the NDA's enforcement activities for the period of October 1, 2002, through September 30, 2003.

NDA Pesticide Inspection Summary for FY2003 (10/01/02 to 09/30/03)

Inspection Type	Total Inspections Accomplished
Certified Applicator Inspections (comm/non-commercial)	128
Certified Applicator Inspections (private)	75
RUP Dealer Record Inspections	116
Marketplace Inspections	159
Producing Establishment Inspections	10
Agricultural Complaint Investigations	38
Agricultural Use Observations	20
Non-Agricultural Complaint Investigations	23
Non-Agricultural Use Observations	15
Import / Export Inspections	1
Experimental Use Permits	3
Total	588

Pesticide Violations by Types, FY2003 (10/01/02 to 09/30/03)

Violation Type	**Number of Violations**		
	Private Applicators	Comm/Noncom Applicators	Other
Record keeping	11	43	8 (dealer records)
Uncertified Applicators	0	11	
Drift - Agricultural	1	8	
Drift - Non Agricultural	0	1	
PPE	0	3	
Disposal	0	2	
RUP Sales	n/a	2	
Worker Protection Standard	0	13	
Other Label Violations	2	24	
Unregistered or Misbranded Pesticides	n/a	n/a	17 (mostly dealers)
Total Violations	14	107	25

CASE REVIEW FOR FY 2003

Routine Inspections

The following is a list of the pesticide enforcement activities and actions taken as a result of violations found during routine inspections:

- 188 Non-action letters to the inspected party or firm. (No violations were documented)
- 36 Record Keeping Violation Notices
- 23 Advisory Letters
- 32 Notices of Warning
- 12 WPS Notices of Violation
- 6 SSURO's
- 8 Administrative Orders with fines totaling $7,925
- 1 Applicator license probation for a period of one year
- 1 Applicator license probation for a period of two years
- 4 Notice of Certification Violation

Complaint Investigations

During the reporting period, 75 complaint investigation reports were conducted. The following is a list of the pesticide enforcement activities and actions taken during the period:

- 16 Non-action letters to the complainant or involved party. (Insufficient evidence to determine violations occurred)
- 15 Advisory Letters
- 21 Notices of Warning
- 1 WPS Notice of Violation
- 24 Administrative Orders with fines totaling $31,730
- 2 Applicator license probation for a period of six months
- 7 Applicator license probation for a period of one year
- 1 Applicator license probation for a period of 18 months
- 1 Applicator license probation for a period of two years
- 2 Consent agreements for environmental site renovation
- 1 Consent agreement for record keeping training
- 1 Consent agreement for certifying all applicators

The following page contains information about a recent U.S. Department of Transportation (DOT) rulemaking which requires people who transport hazardous materials, including farmers, to have security plans developed for their cargo. Additional information can be found on the Internet, including DOT rules and regulations governing this topic (http://hazmat.dot.gov/rules history/rules table200.htm#232) and DOT table of hazardous materials (http://www.myregs.com/dotrspa/)

HAZARDOUS MATERIALS TRANSPORTATION SECURITY REQUIREMENTS
APPLICABILITY TO FARMERS AND FARMING OPERATIONS

Photos courtesy of USDA NRCS

Persons, including farmers, who ship or transport hazardous materials in commerce in amounts that require the shipment to be placarded must develop and implement security plans by September 25, 2003 Examples of materials to which the security plan requirement applies include explosives such as dynamite or detonators, pesticides, fertilizers such as anhydrous ammonia or ammonium nitrate, and fuels such as gasoline, diesel, and propane.

If you ship or transport explosives such as dynamite in any quantity, then you must have a security plan. If you ship or transport explosives such as Division 1.4 detonators and the total quantity you ship or transport at any one time is more than 1,000 pounds, then you must have a security plan.

If you ship or transport fertilizers, pesticides, gasoline, diesel fuel, or propane in packages or containers that are larger than 119 gallons or the total quantity you ship or transport at any one time is more than 1,000 pounds, then you must have a security plan.

If you *do not* ship or transport hazardous materials in amounts that require placarding, then you ***do not*** need to have a security plan. For example:

If your supplier delivers the pesticides, fertilizers, and fuels you use to your farm, then you do not need to have a security plan.

If you pick up fertilizers, pesticides, or fuel from your supplier in packages or containers that are smaller than 119 gallons and the total quantity you transport to your farm at any one time is less than 1,000 pounds, then you do not need to have a security plan.

If you only transport fertilizers, pesticides, and fuels between fields of your farm, then you do not need to have a security plan.

You do not need to develop a transportation security plan for hazardous materials stored on your farm for later use or materials delivered by your suppliers to your fields for application to those fields. You do not need to develop a security plan to cover the actual application or use of hazardous materials on your farm.

U. S. Department of Transportation
Research and Special Programs Administration

If the security plan requirement applies to your operations, the plan must include measures to address personnel security, unauthorized access, and *en route* transportation issues as applicable. For example:

Personnel Security: If you use employees to pick up placarded hazardous materials from your supplier and transport them to your farm, your security plan must include measures to confirm information provided by the employee on his job application or resume. Note that this requirement only applies to employees hired after September 25, 2003, who are involved in the actual shipment or transportation of the materials covered by the plan.

Unauthorized Access: If you do not transport the materials directly from your supplier to your farm, your security plan must include measures to protect against unauthorized access by such means as locks or physical observation of the vehicle. For example, if you stop on the way back to your farm for a snack or a meal, you should keep your vehicle in sight or lock or secure the material in the vehicle.

En route Security: Your security plan must include measures to enhance the security of the materials between the time you pick them up and the time you arrive at your farm. In this case, the most effective security measure would be to minimize the time that the shipment is in transit by going directly from your supplier to your farm.

If you have already implemented security measures applicable to the hazardous materials you use on your farm because of direction or guidance from another Federal agency or an industry association or group, such security measures may be used to comply with the DOT security plan requirement. Examples include: Security measures implemented in accordance with agribusiness guidelines issued by The Fertilizer Institute, the Agricultural Retailers Association, CropLife America, or other industry groups or associations; Security measures implemented in accordance with guidelines issued by USDA or your state or local agricultural agency; and Safety and security measures for pesticides implemented in accordance with EPA regulations.

For Further Information, Contact THE HAZARDOUS MATERIALS INFORMATION CENTER at 1 (800) HMR-4922

Saltcedar

Saltcedar *(Tamarix ramosissima)* was introduced into the United States in the 1800s for stream bank stabilization. Saltcedar or tamarisk is native to Europe and invades riparian areas displacing native species. Once established, saltcedar can rapidly take over and form a monoculture. A fully grown saltcedar plan can transpire up to 200 gallons of water per day. It has been documented to dry up entire lakes in the southwest United States.

Fallen saltcedar leaves exude salt that accumulates in the soil. Over time, the soil becomes too saline for other plants to grow. Saltcedar is a deciduous

Steve Dewey, Utah State University

shrub or small tree ranging from 5 to 20 feet tall. Flower color ranges from white to dark pink. The seeds are very small and are easily dispersed by wind, water, and animals. A typical saltcedar plant produces upwards to ½ million seeds annually. Saltcedar seeds can germinated in water or moist soil. Once germinated a tap root rapidly develops. Saltcedar has been documented to root down to 50 feet.

Saltcedar is a very hardy plant found from Mexico to Canada. It currently infests more than 1½ million acres in the western United States causing major environmental and economic problems wherever it is found. Infestations have been documented in many counties along the Platte River from Wyoming to the Missouri River. It has also been found in some of the reservoirs in the southwest part of the state. Saltcedar is a difficult, and often a very expensive, plant to control. Prevention is the best means of controlling saltcedar, but if the plant is established, chemical control is the preferred method. After applying herbicides, do not remove the top growth for three years; otherwise, resprouting may occur.

For more information regarding saltcedar and invasive plants in Nebraska, contact your local county weed control authority or the Nebraska Department of Agriculture.

Significant cases for FY 2003

Confusing Symptoms

The drought of 2002-2003 caused a number of plants, especially trees, to express symptoms which are easily confused with herbicide damage. The NDA responded to a few of these calls when property owners felt pesticide applications had caused damage to desirable plants. Residue analysis paired with typical symptoms helped the NDA conclude in at least three cases that the observed damage was actually caused by drought stress rather than chemicals.

Unregistered Pesticides

By way of routine marketplace inspections, the NDA found numerous unregistered pesticides which were subsequently removed from sale. In one particular incident, the NDA found a product produced in Denmark, marked only with the product name and nothing else. The product was being promoted by way of an internet web site and a U.S. distributor as a cure-all for animal confinement facilities. Due to claims of pest, disease, and bacterial control, the product was classified as a pesticide, and a national Stop-Sale Order was issued. The distributor, with assistance from the regional office and Headquarters of EPA, helped the company understand the importance of U.S. labeling standards, and received cooperation from the distributor in relabeling the product.

Crop/Site Confusion

During the last two years, the NDA has taken numerous actions against applicators and crop consultants for using or recommending the use of pesticides labeled for field corn on popcorn or sweet corn. While it seems like a minor issue, the ramifications of this practice could lead to condemnation of an entire crop for the producer. The Food Quality Protection Act of 1996 requires all pesticides to list each and every crop to which a product can be applied. Any crop not listed on the label, even if it is considered a related variety (such as popcorn and field corn), is considered off limits for use. Specific to corn species, if the label says “corn” as the site of application, the user is allowed to use that pesticide on field corn, popcorn, and sweet corn. If the label specifies one or two of the corn species, the others are off limits.

Trouble with Termites

Complaints related to improperly applied termiticides have been coming into the NDA at an ever-increasing frequency. There are many reasons why someone might feel that the termiticide treatment they purchased was not what was delivered. Some of these reasons have to do with confusion of terminology on the contract or inspection reports, neither of which is regulated by the Pesticide Program at NDA. There is also a growing concern by the NDA that inadequate applications are allowed by termiticide labels that fall short of including clear, specific language on what must be done during a termiticide application. During the last 12 months, the NDA has issued enforcement action to at least 12 applicators who under applied or misapplied termiticides. The cause of the action is most frequently related to a failure to create a complete chemical barrier around the structure being treated. If the NDA is able to establish inadequate chemical concentrations where applied, it can take penalty action against the applicator and the pest control company.

Drift

Anyone who has been in the pesticide spray business knows that drift happens. It is a simple rule of physics that a small enough spray droplet, no matter how it is generated, will travel through air to an eventual landing as a relationship of the prevailing environmental conditions. Fortunately for the NDA and the pesticide industry, 2003 saw calmer than normal wind conditions, resulting in fewer drift

(Continued on Page 11)

(Continued from Page 10)

complaints. However, two particular situations stand out as examples why it doesn't take a lot of wind to create a situation where applicators can get in trouble from spray drift.

The first situation was when a pesticide inspector conducted a routine observation of an early spring ag application. The wind during the application was not unusual for that time of year, about 15 miles per hour. The applicator felt the application was appropriate because it was early enough in the year that sensitive plants had not yet put leaves on. The inspector, upon reviewing the pesticide label, noted the label prohibited the applicator from applying the pesticide "in a manner that would allow drift to carry off of the target site." This then made the applicator's spray treatment difficult, at best, because the field he was spraying was surrounded on all sides by "non-target" areas (such as farm houses, roadsides, and shelterbelt trees). None of these neighboring sites were listed on the label. The inspector collected a grass sample from the down-wind "non-target" site. The lab found residues of the chemical that was applied, and the NDA found the applicator in violation of the label.

The second situation had to do with a failure on the part of the applicator to fully read the prohibitions on the label. The applicator applied Grazon P+D with a tractor mounted mist blower for control of thistles. What the applicator failed to do was read the entire label and take note of the latter section which stated "Do not use mist blowers for application of this product." Even if the NDA hadn't found residues of the chemical on non-target plants (which we did), the applicator would have been in violation of the label directions. In this particular case, the applicator's use of a mist blower, even though it was during a relatively low wind situation, resulted in damage to many acres of nearby soybeans, trees, and ornamental plants in a downwind farmstead. Mist blowers are wonderful machines to apply mosquito control insecticides, but are one of the worst machines for keeping spray droplets contained in a specific location.

Penalty Action Recap

The following is a quick recap of typical financial penalties issued by the NDA, listing the type of violation involved.

$2,625	for use of a Restricted-Use Pesticide by an applicator without the correct category.
$1,250	for second offense drift of agricultural pesticide.
$ 700	for drift by aircraft onto human.
$ 500	for sale of Restricted-Use Pesticide by dealer to uncertified applicator.
$ 500	for drift by ground rig which damaged sorghum crop.
$ 500	for drift by aircraft onto human.
$ 500	for improper termite bait placement and monitoring.
$ 300	for repeated record keeping violations.
$ 250	for failure to properly follow Worker Protection Standard requirements.

Additional Scientific Reviews of Atrazine Completed

On October 31, 2003, EPA released an addendum to its January 2003 Interim Reregistration Eligibility Decision (IRED). The addendum discusses ecological monitoring and risk mitigation requirements within sensitive watersheds, the most current scientific information regarding potential effects of atrazine on amphibians, and recent scientific work about the potential association between atrazine exposure and the incidence of prostate and other cancers. An EPA press release, a Q & A page, and the new IRED can be seen at EPA's web site at http://www.epa.gov/oppsrrd1/reregistration/atrazine/.

Meet the Entomology Program/ Bureau of Plant Industry Staff

The staff of the Entomology Program of the Bureau of Plant Industry are responsible for the following three areas: (1) nursery inspection and certification, which includes regulatory work at nursery dealer and grower sites, (2) survey and detection activities, which includes gypsy moth, Japanese beetle, cereal leaf beetle, karnal bunt, khapra beetle, and regulatory nematodes, and (3) export certification. The staff includes:

- **Vicki Wohlers**, Program Manager/ State Entomologist, located in the Lincoln main office; responsible for administering the three program areas listed above. E-mail: vickibw@agr.state.ne.us.
- **Gregg Rabe**, Ag Inspection Specialist II, located in Keystone, Nebraska; responsible for nursery dealer and grower inspections, phytosanitary certification, and survey and detection work in the western 2/3 of Nebraska. E-mail: grabe@lakemac.net.
- **Julie Van Meter**, Ag Inspection Specialist I, located in Lincoln, Nebraska; responsible for nursery dealer and grower inspections, phytosanitary certification, and survey and detection work in the Lincoln/southeast/south central Nebraska areas. E-mail: vanmeter@agr.state.ne.us.
- **Ryan Krull**, Ag Inspection Specialist I, located in Omaha, Nebraska; responsible for nursery dealer and grower inspections, phytosanitary certification, and survey and detection work in the Omaha/ northeast/northwest Nebraska areas. E-mail: ryanjk@agr.state.ne.us.
- **Cheryl Stejskal**, Staff Assistant, located in the Lincoln main office; responsible for the processing and printing of federal and state phytosanitary certificates and works with the European corn borer certification program. E-mail: cherylme@agr.state.ne.us.

For more detailed information, go to our web site at: http://www.agr.state.ne.us/division/bpi/ent/ent1.htm.

Department of Agriculture
Noxious Weed Program
(402) 471-2394

Mitch Coffin - Manager

Rose Graves - Pesticide and Noxious Weed Program Secretary

Ron Bouska - *(north central)*
(402) 925-2157

David Boschult - *(northeast)*
(402) 887-4789

Chan Komarek - *(south central)*
(308) 384-2933

Cris Burks - *(west)*
(308) 487-5520

Tom Neill - (southwest)
(308) 856-4293

This newsletter is posted on NDA's web page shortly after it is published. If you would rather view it on-line instead of receiving a hard copy, please submit your e-mail address to craiglr@agr.state.ne.us, and we will notify you of the next publication.

Department of Agriculture
Pesticide Program Staff
(402) 471-2394

Tim Creger - Manager

Buzz Vance - Certification/WPS Training

Craig Romary - Groundwater/Buffer Strip/ Endangered Species

Kim Morgan - Product Registration/ Dealer Licenses

Dick Wiechman - Case Review Officer

Inspectors:
Donald Kemper - *(east central region)*
(402) 471-2394

Rich Franchini - *(north central region)*
(402) 529-6808

Clayton Haman - *(southeast region)*
(402) 471-2394

Jeff Elsen - *(panhandle region)*
(402) 416-4289

Eric Fuentes-Ruiz - *(southwest region)*
(308) 995-2158

Website: www.agr.state.ne.us/division/bpi/pstnx/news.htm

Pesticide Certification Questions?

877-800-4080

This newsletter is available in other formats for persons with disabilities upon request. For an alternate format or for additional information on topics in this publication, please call the Nebraska Department of Agriculture at (402) 471-2394.

TDD users can contact the Department by first calling the Nebraska Relay System. Telephone (800) 833-7352 and asking the operator to call (402) 471-2394.

Merlyn Carlson, Director
Dick Wiechman and
Craig Romary, Editors

PRSRT STD
U.S. POSTAGE
PAID
LINCOLN, NE
PERMIT NO. 212

Nebraska Department of Agriculture
Bureau of Plant Industry
P.O. Box 94756
Lincoln, NE 68509-4756